IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

Crl.MC.No. 2429 of 2006()

SC.16/2006 of I ADDL.ASSISTANT SESSIONS COURT, ERNAKULAM

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PETITIONER: ACCUSED NOS.1 & 2:

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1. ANSARI, S/O. SAINULABUDEEN,
KAIPPILLIPARAMBIL HOUSE, NEAR PHED QUARTERS,
ELAMKULAM, KALOOR.

2. AZAD, S/O. ABDULKHADER,
KAIPPILLIPARAMBIL HOUSE, NEAR PHED QUARTERS,
ELAMKULAM, KALOOR.

BY ADV. SRI.SOORAJ ELANJICKAL

RESPONDENTS: COMPLAINANT:

STATE OF KERALA THROUGH
SUB INSPECTOR OF POLICE, CENTRAL POLICE STATION,
ERNAKULAM, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR
SRI.NAGARAJ NARAYANAN
SRI.SAIJO HASSAN
SRI.A.S.SABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 05/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2429 of 2006

Dated this the 5th day of December 2006

O R D E R

The petitioners are the accused in a prosecution interalia under Sections 308 and 452 I.P.C. The crux of the allegations against them is that they trespassed into a bar hotel and indulged in wanton acts of mischief causing huge loss to the owner of the bar hotel. It is further alleged that they, in furtherance of their common intention attempted to cause hurt to the victim by throwing a garden pot on the head of the victim which missed the mark fortunately and thereby further graver consequences were avoided. Investigation was conducted by the police. Final report was filed. The learned Magistrate took cognizance and committed the case to the court of Sessions. The accused appeared before the court of Sessions also. Accused were heard and charges were framed interalia under Sections 308 and 452 read with 34 I.P.C. The matter stood posted for trial. On the eve of the trial, the petitioners have come to this court with this Criminal Miscellaneous Case.

2. What is the prayer? The learned counsel for the petitioner submits that charges have been improperly and unfairly framed against them under Sections 308 and 452 I.P.C. The framing of

charge under Section 308 I.P.C is totally unjustified and that error committed by the court below compels the petitioner now to stand trial before the Assistant Sessions Court. If charges were not framed under Section 308 I.P.C., it would have been sufficient if the petitioner faced charges before the learned Magistrate. He further contends that, at any rate, the allegations do not constitute the offences alleged under Sections 452 and 308 I.P.C.

3. The petitioners obviously had not chosen to come before this court earlier accepting the allegations levelled against them and in the hope that they can meet the charges under Sections 308 and 452 I.P.C. Otherwise, there is no explanation whatsoever for the petitioners not coming to this court at the stage of filing of the final report, at the stage of committal of the case or even after the framing of charges. On the eve of the date fixed for trial, the petitioners have rushed to this court with this petition under Section 482 Cr.P.C. It must also be noted that an order framing charges is a revisable order and the petitioner could certainly have preferred a revision against the order framing the charges.

4. Invocation of powers under Section 482 Cr.P.C must be an exceptional relief which this court can grant to a petitioner. The petitioner must show that he is worthy of invocation of such power.

The petitioners who have slept over their right all along have come to this court on the eve of the date on which the case was listed for trial by the Sessions Court. I do not intend to express any final opinion on the question whether the framing of charges under Sections 308 and 452 I.P.C was justified or not. I need only mention that the petitioners can raise all their contentions in the trial to be held before the Assistant Sessions Judge. In this matter, which is listed for trial already after framing of the charges and where the framing of charges is not challenged by initiating appropriate proceedings, I find no reason to invoke the extraordinary inherent jurisdiction under Section 482 Cr.P.C at the eleventh hour in favour of the petitioners. The petitioners must certainly stand trial before the learned Sessions Judge. This Criminal Miscellaneous Case is in these circumstances dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006